

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

REGGIE YOUNG,
Petitioner,

-v.-

9:02-CV-1087
(DNH)(DRH)

CHARLES GREINER, Superintendent,
Respondent.

APPEARANCES: **OF COUNSEL:**

REGGIE YOUNG
Petitioner, *pro se*
97-A-4377

HON. ELIOT SPITZER
Office of the Attorney General
State of New York
207 Genesee Street
Utica, NY 13501

G. LAWRENCE DILLON, ESQ.

DAVID R. HOMER, U.S. MAGISTRATE JUDGE

DECISION and ORDER

I. Background.

On August 22, 2002, Petitioner Reggie Young filed a Petition pursuant to 28 U.S.C. § 2254. Dkt. No. 1. By Order of this Court the Petition was accepted for filing and service was directed. Dkt. No. 4.

Respondent filed a Response to the Petition on January 16, 2003. Dkt. No. 7. On March 4, 2003 Petitioner filed a Motion to Stay this action. Dkt. No. 11. Respondent filed no opposition to the Motion to Stay, and the Motion was granted on March 18, 2003. Dkt. No. 13. Petitioner routinely filed the required status reports, and kept the Court advised of the proceedings he was pursuing in the State courts.

On January 12, 2006 this Court lifted the stay and permitted Petitioner an

opportunity to file a Motion to Amend his Petition. Dkt. No. 35. On May 10, 2006 Petitioner again sought to stay this action to address what he claimed to be newly discovered evidence that perjured testimony had been presented in his trial. Dkt. No. 38. This action was again stayed on May 30, 2006, and Petitioner routinely submitted the required status reports.

On October 17, 2007 Petitioner filed a request to lift the stay in this action, and to amend his Petition. Dkt. No. 52. Respondent has not filed a response to the Motion to Amend the Petition.

II. Petitioner's Motion to Amend.

Section 28 U.S.C. 2242 provides that a writ of habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." The Second Circuit has held that the standard for granting or denying a motion to amend a habeas petition shall be controlled by Rule 15 of the Federal Rules of Civil Procedure which provides that "leave to amend shall be freely given when justice so requires." *Littlejohn v. Artuz*, 271 F.3d 360, 362 (2d Cir.2001); *see also* FED. R. Civ. P. 15. A district court should normally permit amendment absent futility, undue delay, bad faith or dilatory motive. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Nerney v. Valente & Sons Repair Shop*, 66 F.3d 25, 28 (2d Cir. 1995) (per curiam). The decision to grant or deny leave to amend lies within the sound discretion of the district court. *See Lennon v. Seaman*, No. 99Civ.2664, 2001 WL 262827 (S.D.N.Y., March 16, 2001); *Ronzani v. Sanofi*, 899 F.2d 195, 198 (1990), citing *Foman v. Davis*, 371 U.S. 178 (1962).

Given Petitioner's *pro se* status, the continued effort by Petitioner to fully exhaust his State court remedies, and Petitioner's compliance with the directives of this Court, the

Court can find no dilatory motive or bad faith on behalf of Petitioner, despite the passage of considerable time. Further, without any input from Respondent, the Court is not able to address the merits, or potential futility, of the claims Petitioner seeks to put forth. Thus, in the absence of any opposition to this Motion from Respondent, Petitioner's Motion to Amend will be granted. Petitioner is advised that this is the final amendment that will be allowed in this action, and that no further stays shall be granted.

WHEREFORE, it is hereby

ORDERED, that Petitioner's Motion to Amend (Dkt. No. 52) is **GRANTED**. Petitioner shall file with the Court, within **thirty days** from the filing date of this Order, a signed copy of his amended Petition. Petitioner shall also serve a copy of the signed amended Petition on Respondent's counsel by regular mail within **thirty days** from the filing date of this Order, and it is further

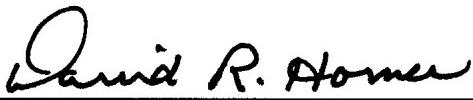
ORDERED, that Respondent shall file an answer to the amended Petition within **thirty days** from service of same on Respondent's counsel, and it is further

ORDERED, that no further Motions to Stay or Motions to Amend the Petition will be permitted in this action, and it is further

ORDERED, that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: January 3, 2008



United States Magistrate Judge